

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON J. COLLINS,	§
	§
Defendant Below-	§ No. 199, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0904002027
Plaintiff Below-	§
Appellee.	§

Submitted: August 25, 2011

Decided: October 12, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 12th day of October 2011, upon consideration of the appellant's opening brief,¹ the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Jason Collins, filed this appeal from the Superior Court's order sentencing him for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment

¹ On August 30, 2011, Collins filed a motion requesting to supplement his opening brief with a letter of support, dated August 17, 2011, which was signed by Collins' outpatient drug treatment counselor. This Court, however, cannot consider evidence that was not considered by the trial court in the first instance. *See Delaware Elec. Coop. v. Duphily*, 703 A.2d 1202, 1207 (Del. 1997). Accordingly, his request to supplement his opening brief is denied.

below on the ground that it is manifest on the face of Collins' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Collins pled guilty on August 20, 2009 to one count each of obtaining a controlled substance by misrepresentation and second degree forgery. In exchange for his guilty plea, the State dismissed several other charges pending against Collins. The Superior Court immediately sentenced Collins on the drug charge to two years at Level V incarceration, to be suspended for one year at Level IV Crest, to be suspended upon successful completion of Crest for one year at Level III Crest Aftercare. On the forgery conviction, the Superior Court sentenced Collins to two years at Level V incarceration to be suspended for one year at Level III probation.

(3) In November 2010, after a violation of probation hearing, the Superior Court resentenced Collins on the drug charge to two years at Level V incarceration, to be suspended for six months at Level IV (halfway house or home confinement) followed by six months at Level II probation. The Superior Court resentenced Collins on the forgery charge to two years at Level V incarceration to be suspended for eighteen months at Level I (restitution only). In March 2011, Collins was found guilty of his second VOP. The Superior Court resentenced Collins on the drug charge to two

years at Level V incarceration to be suspended upon Collins' successful completion of the Level V Key Program with no probation to follow. On the forgery charge, the Superior Court sentenced Collins to two years at Level V incarceration to be suspended for one year at Level III (Crest Aftercare). Collins appeals from this sentence.

(4) In his opening brief on appeal, Collins contends that the Superior Court erred in finding him guilty of a VOP for testing positive for benzodiazepine use just one day before he obtained a valid prescription for the drug. Collins also contends that probation officers exceeded their authority and were deliberately indifferent to his serious medical condition by interfering with his treatment for a professionally diagnosed anxiety disorder. Collins' second argument is not a matter that was raised to the Superior Court in the first instance. Accordingly, this Court will not consider that claim for the first time on appeal.²

(5) With respect to Collins' first argument, the record of the contested VOP hearing reflects that Collins, through his counsel, admitted taking benzodiazepine on February 7, 2011 without a valid prescription. Collins also admitted that he had lied when he told his probation officer that he had tested positive for using benzodiazepine because his doctor had given

² Del. Supr. Ct. R. 8 (2011).

him a sample of the drug to try before writing a prescription for him. The prescribing doctor, in fact, had not given Collins any sample to try. While he admitted the violation, defense counsel argued at the VOP hearing that the six weeks Collins already had spent in custody was sufficient punishment and requested the Superior Court to sentence Collins to outpatient treatment.

(6) Collins now argues that the Superior Court erred in finding him guilty of violating probation. In light of counsel's admissions to the Superior Court, however, there is simply no dispute that Collins had violated probation by taking medication without a valid prescription. We therefore find no merit to Collins' argument on appeal.

(7) To the extent Collins suggests that his sentence was excessive, this Court's appellate review of a sentence generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.³ In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.⁴ In this case, the sentence imposed by the Superior Court did not exceed the time remaining to be served on Collins' original sentence. We

³ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁴ 11 Del. C. § 4334(c).

find that the sentence was authorized by law and was neither arbitrary nor excessive.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice